

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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|---|---|----------|
| Joint Application of American Transmission    | ) |          |
| Company, ITC Midwest LLC, and Dairyland       | ) |          |
| Power Cooperative, for Authority to Construct | ) |          |
| And Operate a New 345 kV Transmission Line    | ) |          |
| From the Existing Hickory Creek Substation in | ) | 5-CE-146 |
| Dubuque County, Iowa, to the Existing         | ) |          |
| Cardinal Substation in Dane County,           | ) |          |
| Wisconsin, to be Known as the Cardinal-       | ) |          |
| Hickory Creek Project                         | ) |          |

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**DRIFTLESS AREA LAND CONSERVANCY  
AND WISCONSIN WILDLIFE FEDERATION'S  
MOTION FOR RECUSAL AND DISQUALIFICATION**

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**MOTION AND SUMMARY OF ARGUMENT**

With due and sincere respect for the Public Service Commission of Wisconsin (“Commission”) and its Commissioners, the Driftless Area Land Conservancy (“DALC”) and Wisconsin Wildlife Federation (“WWF”) move and hereby request that Commissioner Michael Huebsch and Chair Rebecca Valcq recuse themselves and be disqualified from further substantive proceedings and from making a final adjudicatory decision on the merits in this contested case. For the reasons explained below, the Commissioners’ entanglements present conflicts of interest and at least an appearance of bias and lack of impartiality when the totality of the circumstances are considered. *Guthrie v. Wisconsin Employment Relations Comm’n*, 111 Wis. 2d 447, 454 (1983); *Guthrie v. Wisconsin Employment Relations Comm’n*, 107 Wis. 2d 306, 314 (1982); *See Bus. & Prof’l People for Pub. Interest v. Barnich*, 244 Ill. App. 3d 291 (1993).

**Summary of the Controlling Legal Standard:** The avoidance of even the appearance of judicial bias is central and important in our administrative law and judicial system. “The very

purpose of § 455(a) [the federal judicial recusal statute] is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988). Avoiding the appearance of bias or partiality is so important that it does not matter “whether or not the judge actually knew of facts creating an appearance of impropriety.” *Id.* at 860. Therefore, recusal is required whenever “impartiality might reasonably be questioned.” *Id.* at 861; *see* 28 U.S.C. § 455(a) (requiring a federal judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned”); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009) (“the Due Process clause has been implemented by objective standards that do not require proof of actual bias”); *Liteky v. United States*, 510 U.S. 540, 548 (1994) (same).

Under the law applicable to the Commission in this contested case: (1) The legal standard is appearance of bias or lack of impartiality, not a demonstration of actual bias; and (2) When the facts are sufficiently compelling based on the combination or the totality of the circumstances, then disqualification or recusal is warranted and mandated for an individual Commissioner and, in the circumstances of this case, for the full Commission. **The controlling legal standard for recusal and disqualification is explained in more detail at pages 7 – 12 below.**

**Summary of the Facts Relating to the Recusal of Commissioner Huebsch:** This contested case involves an Application by American Transmission Company (“ATC”), ITC Midwest (“ITC”), and Dairyland Power Cooperative (“Dairyland”) (collectively, “Applicants”) to the Commission requesting a Certificate of Public Convenience and Necessity (“CPCN”) to construct the huge Cardinal-Hickory Creek transmission line, which would cut a wide swath through Wisconsin’s scenic Driftless Area’s unique natural resources, communities and family farms. Among other things, the Commission’s approval would allow the Applicants to charge

Wisconsin ratepayers more than \$2.2 billion over 40 years, and it would allow the Applicants to exercise eminent domain powers to condemn and take private property.

On August 20, 2019, the Commissioners met for the first time in an open meeting to discuss and deliberate on the merits of this contested case. Chair Rebecca Valcq convened the open meeting, and she stated at the outset that Commissioner Michael Huebsch would lead the Commission's deliberations because he is the Commission's representative to the Midcontinent Independent System Operator ("MISO") Advisory Committee and to the Organization of MISO States ("OMS"). Commissioner Huebsch then did, in fact, lead the Commission's deliberations and decision-making on the contested issues in this case throughout that meeting.

Commissioner Huebsch is a member of the MISO Advisory Committee, and he engages in regular meetings and conversations with MISO Board members and staff. "[T]he Advisory Committee shall be a forum for its members to be apprised of the MISO's activities and to provide information and advice to the management and Board of Directors of the MISO on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, ... The Advisory Committee reports to the MISO Board of Directors. ... [T]he MISO President and at least two other members of the MISO Board of Directors shall meet with the Advisory Committee at least quarterly."<sup>1</sup> Through his participation and membership on the MISO Advisory Committee, Commissioner Huebsch regularly receives information from MISO's Board and staff outside of the Commission's hearing room and outside of the evidentiary record presented in this case. Those are extrajudicial sources and *ex parte* communications. Wis. Stat. § 227.50 (limiting *ex parte* communications in contested cases).

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<sup>1</sup> MISO Advisory Committee CHARTER, adopted March 15, 2019, <https://cdn.misoenergy.org/2019%20AC%20Charter328080.pdf> (viewed on September 18, 2019). *See* Exhibit A.

In this particular case, MISO chose to intervene as a party, and the Commission granted that intervention. MISO's attorneys actively litigated issues of law and fact before the Commission in this contested case. MISO submitted substantial expert witness testimony. MISO's attorneys filed motions, engaged in discovery, presented their expert witnesses' testimony, and engaged in cross-examination of DALC and WWF's and other intervenor parties' expert witnesses. MISO submitted post-trial briefs arguing for the Commission to approve the Applicants' requested CPCN. Commissioner Huebsch has therefore been meeting with and communicating with and advising MISO outside of the Commission's evidentiary hearing process at the very time that: (1) MISO is an active party in this contested case; and (2) Commissioner Huebsch is leading the Commissioners' deliberations to adjudicate and decide the issues in this contested case.

Moreover, as revealed during discovery, MISO and the Applicants entered into a "common interest" arrangement to cooperatively litigate this case together before the Commission and allow them to share and discuss sensitive case information and strategy on a protected privileged basis. PSC REF#: 363983 (attached hereto as Exhibit B). MISO and the Applicants are partners in litigation strategy, discussing what positions to take, what evidence to present, and what alternatives to consider or not, and how. *Id.* MISO does not regularly intervene in cases before this Commission, so Commissioner Huebsch's participation on the MISO Advisory Committee here will not always raise the particular concerns that are so clearly presented by the facts in this specific case. In this contested case, however, Commissioner Huebsch is leading the Commission's deliberations on Applicants' requested CPCN while he is also participating in extrajudicial meetings and *ex parte* communications with MISO, which is a party in this case and has a "common interest" arrangement with the Applicants. These facts and circumstances present a conflict of interest and an appearance of bias and lack of impartiality of Commissioner Huebsch

and the Commission as a whole. **The facts relating to the recusal of Commissioner Huebsch are explained in more detail at pages 12 – 20 below.**

**Summary of the Facts Relating to the Recusal of Chair Valcq:** The concerns in this contested case about Commissioner Huebsch are exacerbated by the facts and realities of Chair Rebecca Valcq’s prior long-term employment with and extensive legal practice representing the interests of We Energies, whose parent company (WEC Energy Group), in turn, owns more than 60% of Applicant American Transmission Company (“ATC”). First, Chair Valcq’s engagement with We Energies was not one or two cases, or occasional, or episodic. In fact, almost her entire legal career has been dedicated to advocating for We Energies’ interests, and her “practice responsibilities included all aspects of administrative and regulatory law, policy and legislative interpretation, renewable energy contract negotiation, and representing [her] company’s interests while trying cases in front of the Public Service Commission of Wisconsin.”<sup>2</sup> After working at We Energies for almost 15 years (June 1999–April 2014), Chair Valcq then worked as a “Partner in Quarles & Brady’s Energy, Environment and Natural Resources Group, specializing in regulatory and energy law (Sep. 2017–Jan. 2019).” *Id.* On information and belief, Quarles & Brady served as We Energies’ principal outside law firm and legal counsel.

Chair Valcq’s “Recusal Policy for [Her] Appointment to the Public Service Commission” (attached as Exhibit C) reflects her extensive legal representation of We Energies, WEPCO and related entities.<sup>3</sup> Chair Valcq worked at Quarles & Brady until Friday, January 4, 2019 and joined the Commission as Chair on Monday, January 7, 2019. *Id.* The Applicants have been actively working to develop the Cardinal-Hickory Creek transmission line since 2014.<sup>4</sup> Applicants filed

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<sup>2</sup> <https://www.linkedin.com/in/becky-cameron-valcq-2aa4a28/> (viewed on September 18, 2019).

<sup>3</sup> <https://assets.documentcloud.org/documents/5755968/Valcq-Recusal-Policy-and-Addendum-a-as-of-2-1-19.pdf>

<sup>4</sup> [www.cardinal-hickorycreek.com](http://www.cardinal-hickorycreek.com) (viewed on September 18, 2019)

their CPCN application to the Commission in April 2018. Therefore, her representation of ATC's majority owner while at Quarles & Brady overlapped this case.

Second, Chair Valcq limited her recusal policy statement to include only "matters at the Commission where, while at either Quarles & Brady or WEPCO, she personally and substantially participated in that matter...". That does not address concerns, however, regarding the appearance of bias or potential lack of impartiality in this contested case when WEC Energy Group owns a controlling interest of more than 60% of Applicant ATC. **The facts relating to the recusal of Chair Valcq are explained in more detail at pages 20-23 below.**

**Remedy and Relief:** The totality of the circumstances is that the Commission's deliberative process for adjudication of this contested case presents an appearance of bias and potential lack of impartiality. DALC's and WWF's protected constitutional due process rights and fundamental fairness are impaired and violated. The Applicants' requested CPCN, if approved, would grant them authority to exercise eminent domain and take private property. DALC and WWF (and other intervenors) must not be deprived of their property without due process of law under the Fifth Amendment to the United States Constitution.

The Commission's deliberations as a whole have been contaminated by Commissioner Huebsch's participation and his conflicts of interest, appearance of bias and potential lack of impartiality, which renders the Commission's order in this case void. *Jackson v. Benson*, 249 Wis. 2d 681, 691 (2002) ("Where a justice who participated in a case was disqualified by law, the court's judgment in that case is void."). Under the totality of the circumstances, there is an appearance of bias and a risk of impropriety that is impermissibly high. *Guthrie v. Wisconsin Employment Relations Comm'n*, 111 Wis. 2d 447, 454 (1983).

Movants do not bring this motion lightly; however, movants do believe that legal lines have been crossed as became clear and crystallized at the Commissioners' open meeting for deliberation on August 20, 2019. The facts in this case require that Commissioner Huebsch and Chair Valcq should each, for different reasons, recuse themselves from this matter. Because the deliberations have been influenced by the participation of Commissioner Huebsch, who led the Commission's deliberations at the August 20, 2019 open meeting, and of Chair Valcq, the current Commissioners may not legally proceed to determine approval of the requested CPCN for the Applicants' proposed Cardinal-Hickory Creek transmission line on this record.

To the extent that the Commission construes Wisconsin statutes to require that it make a final decision in this case by September 29, 2019, in these particular legal and factual circumstances, those statutes are unconstitutional as applied here. Strict application would violate DALC's, WWF's and certain other intervenor parties' protected due process and property rights under the Fifth Amendment to the United States Constitution. Accordingly, the Applicants' requested CPCN cannot legally be deemed to be approved. **The remedy and relief are explained in more detail at pages 23 – 25 below.**

#### **CONTROLLING LEGAL STANDARD FOR RECUSAL AND DISQUALIFICATION**

In this case, the Commission exercises adjudicatory, judicial decision-making powers by applying the detailed statutory standards for approval or denial of a CPCN based on an evidentiary record developed through trial-type proceedings. This is not a rulemaking case or a legislative proceeding. This is a contested case under the Commission's rules of practice in which the Commission will be making an adjudicatory decision. This case involves: expert testimony by the Applicants, the Commission's Staff, DALC/WWF, MISO and many other parties; discovery; pre-trial motions; a trial-type evidentiary hearing presided over by an Administrative Law Judge;

presentation at trial of direct, response, rebuttal and sur-rebuttal testimony; cross-examinations of those experts on their testimony; objections and trial-type rulings; and post-trial briefs, among other factors. The legal standards for judicial recusal therefore apply to this case.

The Commission sits as the adjudicator in this matter, and, as such, it is required to render an independent and impartial decision untainted by any appearance of bias or impropriety, and the Commission is obligated to afford due process and a fair and unbiased hearing to all parties. *Guthrie v. Wisconsin Employment Relations Comm'n*, 111 Wis. 2d 447 (1983). The Wisconsin Code of Judicial Conduct parallels the Code of Conduct for United States Judges, which provides that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). Wisconsin’s judicial code states that a judge should recuse himself or herself in a proceeding when the facts and circumstances are such that a reasonable person “would reasonably question the judge’s ability to be impartial.” SCR 60.04(4). “Under this rule, a judge must recuse himself or herself whenever the facts and circumstances the judge knows or reasonably should know raise reasonable question of the judge’s ability to act impartially.” SCR 60.04 (Comment).

The duty to recuse is mandatory, and a judge must recuse himself or herself, whether or not a motion to disqualify has been filed, whenever it is that he or she comes to the realization that impartiality can reasonably be questioned or there might reasonably be an appearance of bias. The test is objective and depends not on the presence of actual prejudice or bias, but on the appearance of prejudice or bias—i.e., whether an objective observer “would entertain a significant doubt that justice would be done in the case.” *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985).

Avoiding even the appearance of impropriety is essential: “The very purpose of [the federal judicial recusal standard] is to promote confidence in the judiciary by avoiding even the appearance



of impropriety whenever possible.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883 (2009). It does not matter if the judge actually harbors bias or prejudice. Judicial disqualification is “evaluated on an objective basis, so what matters is not the reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U.S. 540, 548 (1994).

A judge may be required to recuse even if the facts requiring recusal are “accidental” and are not the result of any bad faith or impropriety on the part of the judge. *Pepsico Inc.*, 764 F.2d at 461. Thus, as the Seventh Circuit explained: “The question before us is *not* whether the Judge is biased.” *In re U.S.*, 572 F.3d 301, 312 (7th Cir. 2009) (emphasis in original). Instead, the question of recusal turns on whether “a reasonable well-informed observer could question the Judge’s impartiality.” *Id.*

The U.S. Supreme Court, the Wisconsin Supreme Court, and other courts have emphasized the importance of impartiality and due process in administrative agencies as well as courts. “[A] ‘fair trial in a fair tribunal is a basic requirement of due process’” that “applies to administrative agencies which adjudicate as well as to courts.” *Withrow v. Larkin*, 421 U.S. 35, 46 (1975) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)); see also *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973). In *Kachian v. Optometry Examining Bd.*, 44 Wis. 2d 1, 13 n.14 (1969), the Wisconsin Supreme Court explained that “[t]he common-law rule of disqualification applicable to judges extends to every tribunal exercising judicial or quasi-judicial functions.” *Ibid.* (quoting 1 Am. Jur.2d, Administrative Law, § 63, p. 859).

The Wisconsin Supreme Court stated, in a case holding that a member of the Wisconsin Employment Relations Commission was disqualified from adjudicating a case in which he had previously acted as counsel to one of the parties, that “[t]here can also be a denial of due process

when the risk of bias is impermissibly high.” *Guthrie v. Wisconsin Employment Relations Comm'n*, 111 Wis. 2d 447, 454 (1983); *see also Marder v. Bd. of Regents of Univ. of Wisconsin Sys.*, 286 Wis. 2d 252, 270 (2005) (applying the “risk of bias is impermissibly high” standard). In *Guthrie*, the court held that “[t]here need be no proof of partiality or bias” because in the circumstances presented in the case, “the possibility of partiality or bias is too high to be constitutionally tolerable.” *Id.* at 460.

The Appellate Court’s decision in *Guthrie*, which the Supreme Court upheld, states:

This court holds that where a compelling appearance of impropriety on the part of the administrative judge is present, that administrative judge should be disqualified. A compelling appearance of impropriety may be proved by a single egregious act which creates severe suspicion of the administrative procedure. It may also exist where a number of acts, not individually as egregious in nature, together have a cumulative impact of eroding public trust in an administrative agency. We do not hold that every showing of the appearance of impropriety should disqualify an administrative judge. The particular facts of each individual case will determine whether the appearance of impropriety is so compelling that it must result in the disqualification of the administrative judge.

*Guthrie v. Wisconsin Employment Relations Comm'n*, 107 Wis. 2d 306, 314 (1982). The Court’s point is that the administrative agencies and courts must look at whether the actions “together have a cumulative impact of eroding public trust in an administrative agency.” *Id.*

In *Business and Professional People for the Public Interest v. Barnich*, 244 Ill. App. 3d. 291 (Ill. App. Ct. 1993), the Illinois Appellate Court held that Chair Terrence Barnich of the Illinois Commerce Commission must be recused from adjudicating cases involving Commonwealth Edison Company, the state’s largest electric utility—like We Energies in Wisconsin—because of his appearance of bias:

On the basis that defendant was a commissioner whose duties were similar to those of a judge, we hold that the judicial conduct principles applied to him, resulting in a duty to recuse himself when his impartiality was reasonably questioned. We also hold that plaintiffs’ complaint stated a cause of action because it sufficiently alleged the appearance of impropriety by defendant, who, as a commissioner, was required

to avoid such an appearance and was statutorily prohibited from making *ex parte* communications.

244 Ill. App. 3d. at 297.

All of these cases—*Barnich*, *Guthrie*, *Caperton*, *Liljeberg* and *Liteky*—turn on their particular facts. Collectively, they show: (1) The applicable legal standard is whether there is an appearance of bias, not a demonstration of actual bias; and (2) When the court finds the facts to be sufficiently compelling based on the “cumulative impact” or totality of the circumstances, then the court finds that recusal or disqualification is warranted and mandatory.

“Where a justice who participated in a case was disqualified by law, the court’s judgment in that case is void.” *Jackson v. Benson*, 249 Wis. 2d 681, 691 (2002). The same rule applies “when the disqualified judge has acted simply as one of a bench composed of several judges, even though the vote of the disqualified judge was not necessary to the decision.” *Case v. Hoffman*, 100 Wis. 314, 74 N.W. 220, 222 (1898).<sup>5</sup>

For these reasons, the cumulative impact and the totality of facts and circumstances regarding Commissioner Huebsch and Chair Valcq create an objective risk of bias and lack of impartiality that is impermissibly high. DALC and WWF respectfully request: (1) that Commissioner Huebsch and Chair Valcq each recuse themselves from further deliberation and votes in this matter in order to avoid the appearance of bias and lack of impartiality and protect the integrity and public trust in the decisions of the Commission; and (2) that the Commission, as a

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<sup>5</sup> The majority of U.S. Courts of Appeals to take up the question have similarly held that the participation of one biased decisionmaker in a multi-member panel voids the entire panel’s decision. *Berkshire Employees Ass’n of Berkshire Knitting Mills v. N.L.R.B.*, 121 F.2d 235, 239 (3rd Cir. 1941); *Cinderella Career & Finishing Schs., Inc. v. Fed. Trade Comm’n*, 425 F.2d 583, 592 (D.C. Cir. 1970); *Am. Cyanamid Co. v. Fed. Trade Comm’n*, 363 F.2d 757, 767–98 (6th Cir. 1966); *Antoniou v. Sec. Exch. Comm’n*, 877 F.2d 721, 726 (8th Cir. 1989); *Stivers v. Pierce*, 71 F.3d 732, 748 (9th Cir. 1995).

whole, find that it is disqualified from issuing a CPCN for the proposed Cardinal-Hickory Creek transmission line on the basis of this tainted process.

### **FACTS RELATING TO THE RECUSAL OF COMMISSIONER HUEBSCH**

Commissioner Huebsch's extensive relationships and extrajudicial communications with the MISO Board of Directors and MISO staff, and with representatives of other parties to this case that intervened to support the requested CPCN for the proposed Cardinal-Hickory Creek transmission line, created an unreasonable risk of bias that contaminated the Commission's deliberations in this contested case.

When the Commission began its August 20, 2019 open meeting for decision-making, Chair Valcq began by stating that Commissioner Huebsch would lead the Commission's deliberations because of his close ties to MISO ("as our delegated Commissioner for MISO and OMS") and would therefore guide the Commission's analysis and deliberations on the Applicants' requested CPCN for the proposed Cardinal-Hickory Creek transmission line.

Following Chair Valcq's statement, movants conducted further research to review the extent of Commissioner Huebsch's involvement with MISO. As described below, the research revealed that Commissioner Huebsch had extensive communications with MISO's Board and staff, and as well as with other parties aligned with the Applicants in this contested case, about transmission planning, alternative transmission solutions, and non-transmission alternatives, among other topics that are central to this case. These extrajudicial relationships and *ex parte* communications with other parties appear to have continued throughout the entirety of the case. Commissioner Huebsch's out-of-court communications regarding contested issues, which took place with MISO and other parties during the pendency of the case, constitute *ex parte*

communications and extrajudicial sources of information that create, at a minimum, an appearance of bias that requires Commissioner Huebsch's recusal or disqualification. Wis. Stat. § 227.50.

In this case, the boundaries have been breached between permissible stakeholder discussions and improper *ex parte* communications under Wis. Stat. § 227.50. Commissioner Huebsch participated in MISO Advisory Committee meetings and discussions while the present case is and was pending in active litigation before the Commission even though: (1) MISO, itself, is an active party intervenor litigating this contested case before the Commission; (2) The Applicants (or, at least, ATC) and MISO entered into a "common interest" arrangement and coordinated litigation and strategic advocacy (see Exhibit B attached hereto); (3) The MISO Advisory Committee and its meetings included several other parties in this contested case who are actively supporting the Commission's approval of the proposed Cardinal-Hickory Creek transmission line; (4) The MISO Advisory Committee's discussions covered policy matters that were being concurrently litigated in this contested case; and (5) Commissioner Huebsch is leading the Commission's deliberations in this contested case.

**MISO Is an Active Intervenor Jointly Litigating the Case with Applicants:** MISO developed and approved the proposed Cardinal-Hickory Creek transmission line as part of its Multi Value Portfolio ("MVP") process in 2011. MISO and Applicant ATC strategized together to craft the CPCN Application to the Commission, and they entered into a "common interest" arrangement. PSC REF#: 363983 (Lauren Azar email, Exhibit B).

MISO moved to intervene as a party in this contested case on October 14, 2018. (PSC REF#: 353201). MISO's motion stated that it has "a substantial interest in the outcome of this proceeding," and that MISO "will be affected by any order issued by the Commission" in this case. *Id.* The Commission granted MISO's intervention.

MISO subsequently filed testimony supporting the CPCN Application in this case. MISO conducted discovery, cross-examined the DALC/WWF expert witnesses, and filed briefs supporting Applicants' CPCN for the proposed Cardinal-Hickory Creek transmission line.

**Commissioner Huebsch's Active Involvement with MISO:** Commissioner Huebsch has extensive engagement and communications with MISO. First, Commissioner Huebsch serves as the Secretary of OMS. The OMS Mission Statement states that "[t]he purpose of the OMS is to coordinate regulatory oversight among the states; making recommendations to the Midcontinent Independent System Transmission Operator (MISO), the MISO Board of Directors, the FERC, other relevant government entities, and state commissions as appropriate; and intervening in proceedings before the FERC and in related judicial proceedings to express the positions of the OMS."<sup>6</sup> MISO provides funding to OMS,<sup>7</sup> such as a grant of \$1,348,959 in 2018.<sup>8</sup> Through his position at OMS, Commissioner Huebsch apparently has frequent communications with representatives of MISO and other parties that regularly participate in contested case before the Commission.

More fundamentally, Commissioner Huebsch is a member of the MISO Advisory Committee. The MISO Advisory Committee's mission statement says that it "serves as a forum for MISO members to keep apprised of MISO's activities and to provide information and advice to the [MISO] Board of Directors on policy matters of concern."<sup>9</sup> The MISO Advisory Committee's Charter (Exhibit A) states<sup>10</sup>:

- "The Advisory Committee reports to the MISO Board of Directors."

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<sup>6</sup> <https://www.misostates.org/index.php/about>

<sup>7</sup> <https://www.misostates.org/images/financial/OMSFundingAgreement.pdf>

<sup>8</sup> [https://www.misostates.org/images/financial/Financial\\_Statements/Organization\\_of\\_MISO\\_States\\_Inc.\\_123118\\_Audit\\_FS\\_FINAL.pdf](https://www.misostates.org/images/financial/Financial_Statements/Organization_of_MISO_States_Inc._123118_Audit_FS_FINAL.pdf)

<sup>9</sup> <https://www.misoenergy.org/stakeholder-engagement/committees/advisory-committee/>

<sup>10</sup> <https://cdn.misoenergy.org/2019%20AC%20Charter328080.pdf>

- “The MISO President and at least two other members of the MISO Board of Directors shall meet with the Advisory Committee at least quarterly.”
- “[T]he reports of the Advisory Committee and any minority reports shall be presented by the MISO President to the MISO Board of Directors.”

The MISO Advisory Committee includes representatives of transmission owners, utilities, independent power producers, and other MISO stakeholders that frequently participate in regulatory proceedings before the Commission and other regulatory commissions.<sup>11</sup> The Committee meets several times a year to discuss policy matters and “hot topics” that are often contested issues in Commission proceedings.<sup>12</sup>

Documents posted on MISO’s website indicate that Commissioner Huebsch attended at least three in-person MISO Advisory Council meetings during the pendency of or in proximity to this contested case in March 2018 (in New Orleans), March 2019 (again in New Orleans), and June 2019 (in Traverse City, Michigan).<sup>13</sup> Documents posted on MISO’s website indicate that there were presentations and discussions on relevant, material contested facts and issues that Applicants, MISO, DALC/WWF and other parties were contemporaneously litigating before the Commission in this contested case.<sup>14</sup>

**The MISO Advisory Committee Meeting on March 20, 2019:** MISO’s records show that Commissioner Huebsch attended the MISO Advisory Committee meeting in New Orleans on March 20, 2019,<sup>15</sup> which took place while this contested case was pending before the Commission and shortly after the Applicants filed their direct testimony. In addition to Commissioner Huebsch,

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<sup>11</sup> <https://cdn.misoenergy.org/2019%20AC%20Members-Alternates315720.pdf>

<sup>12</sup> <https://www.misoenergy.org/stakeholder-engagement/committees/advisory-committee/>

<sup>13</sup> It is, of course, reasonably likely that Commissioner Huebsch engaged in many other communications with MISO Advisory Committee members, and with MISO Board and MISO Staff during the pendency of this CPCN case before the Commission in light of his prominent role in OMS and on the MISO Advisory Committee.

<sup>14</sup> <https://www.misoenergy.org/stakeholder-engagement/committees/advisory-committee/>

<sup>15</sup> See <https://cdn.misoenergy.org/20190522%20AC%20Item%2001c%20Minutes%2020190320331762.pdf>.

MISO's records show the following attendees, among others, whose companies or organizations are parties in this contested case involving the Cardinal-Hickory Creek transmission line: several MISO Board members and Staff; Cynthia Crane of ITC, an Applicant in this contested CPCN case; Chris Plante of WEC Energy Group, which owns 60% of ATC, an Applicant in this contested CPCN case; Beth Soholt, the Executive Director of Clean Grid Alliance, which is an intervenor party (one of the "Clean Energy Groups") in this contested CPCN case; and Megan Wisersky of MG&E, which is a part-owner of ATC, an Applicant in this contested CPCN case.<sup>16</sup>

While it is not clear from the posted documents who said what to whom on all matters at this New Orleans meeting, it is clear from the posted Agenda (which would have been available to Commissioner Huebsch in advance of the meeting) and from the meeting minutes that the discussions included matters directly relevant to the contested CPCN case involving the proposed Cardinal-Hickory Creek transmission line that was and is pending before the Commission. For example, the minutes to the March 2019 meeting indicate that Cynthia Crane, who is employed by ITC (which is one of the Applicants here), provided a detailed update on MISO's work on Storage as Transmission-Only Asset and Non-Transmission Alternatives ("NTAs") in her role as MISO's Chair of the Planning Advisory Committee. Ms. Crane expressed her viewpoints on these topics, including her opinion that "MISO does not have jurisdiction over NTAs and that there is no current cost recovery mechanism under the Tariff to allow for this."

Use of energy storage as a transmission solution is one of the central issues in this contested transmission line case before this Commission. DALC/WWF witnesses Jon Wellinghoff and Kerinia Cusick directly addressed this issue in their testimony, and they were cross-examined by the Applicants' attorneys and MISO's attorney during the hearings.<sup>17</sup> Commissioner Huebsch

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<sup>16</sup> *Id.*

<sup>17</sup> See e.g., Direct-DALC/WWF-Wellinghoff-r-8-17; Tr. at 1876-1879.



failed to disclose his attendance at this March 2019 meeting, and DALC and WWF did not have an opportunity to rebut Ms. Crane's *ex parte* statements and extrajudicial source information.

Commissioner Huebsch's communications at this and other such meetings with MISO, Applicants and other parties in this contested case before the Commission raises, at a minimum, an impression of impropriety and appearance of bias that erodes the public's trust in the fairness and impartiality of the Commission's decision-making process. The appearance of bias and impropriety is heightened by the fact that many of the key parties to these discussions and other communications—the Applicants, MISO, and the Clean Grid Alliance—are all strongly litigating and advocating in support of the CPCN, and they were contemporaneously filing expert testimony at the Commission advocating approval of the proposed Cardinal-Hickory Creek transmission line.

Commissioner Huebsch continues to be active in the MISO Advisory Committee. Meeting minutes indicate that he was on the Agenda Planning Committee for the MISO Advisory Committee meeting held on September 18, 2019 in St. Paul.

Commissioner Huebsch should have recognized that these communications were not appropriate when MISO and the Applicants were actually parties before him and the Commission in this contested case involving many of the same issues and matters. He should have disclosed this conflict. The ongoing *ex parte* communications and extrajudicial information during the pendency of this contested case create a compelling appearance, at least, of impropriety and appearance of bias. Commissioner Huebsch should have disclosed these communications and recused himself from participating in this case.

**Applying the Controlling Legal Standard:** Wisconsin law states that “in a contested case, no *ex parte* communication relative to the merits or a threat or offer of reward shall be made, before a decision is rendered, to the hearing examiner or any other official or employee of the

agency who is involved in the decision-making process, by ... [a] party to the proceeding, or any person who directly or indirectly would have a substantial interest in the proposed agency action or an authorized representative or counsel.” Wis. Stat. § 227.50. If an *ex parte* communication occurs, the recipient of the *ex parte* communication must notify the parties “of the substance or nature of the communication,” and parties may request an opportunity to rebut that communication. *Id.* Commissioner Huebsch did not publicly disclose these *ex parte* communications, and there was no opportunity for parties to rebut those communications.

*Ex parte* communications violate due process “if the decision-maker is provided new and material information in the course of the communication,” *Marder v. Bd. of Regents of Univ. of Wisconsin Sys.*, 286 Wis. 2d 252, 270 (2005), or “when the risk of bias is impermissibly high.” *Id.* (quoting *Guthrie v. WERC*, 111 Wis.2d 447, 454 (1983)). The Wisconsin Court of Appeals recently held that constitutional due process was violated when a judge accepted a Facebook friend request from a litigant after a contested evidentiary hearing, but before the decision was issued. *In re Paternity of B.J.M.*, 2019 WI App 10, 386 Wis. 2d 267. The Court stated that such “*ex parte* communications have the potential to erode public confidence and create the appearance of partiality,” regardless of whether the Judge viewed the litigant’s shared Facebook posts that related to the subject matter of the case or was subjectively influenced by them. *Id.* at ¶¶ 25-26. The Court also found that the timing of when the judge became Facebook friends with the litigant “would cause a reasonable person to question the judge’s partiality.” *Id.* at ¶ 21. Likewise, the timing of the MISO meetings and communications here raises significant concerns because they took place in parallel with this contested CPCN case before the Commission. For example, Commissioner Huebsch met with the MISO Board and Staff in New Orleans in March 2019, and MISO filed its direct testimony in April 2019.

The Illinois Appellate Court addressed a similar *ex parte* issue involving communications between the Chair of the Illinois Commerce Commission and Commonwealth Edison Company representatives. *Bus. & Prof'l People for Pub. Interest v. Barnich*, 244 Ill. App. 3d 291 (1993). The Appellate Court expressed concern about the appearance of impropriety in light of communications between Chair Barnich and Commonwealth Edison representatives, noting that many phone calls “were placed from defendant's personal office telephone to the telephones of paid Edison representatives,” including a Commonwealth Edison attorney, lobbyist, Chairman of the Board, and Vice President. *Id.* at 293–94. The Illinois Appellate Court recused Chair Barnich, holding that “plaintiffs’ complaint stated a cause of action because it sufficiently alleged the appearance of impropriety by defendant, who as a commissioner, was required to avoid such an appearance and was statutorily prohibited from making *ex parte* communications.” *Id.* at 297. Similarly, in this case, the problem arises from the totality of the facts and circumstances. The court in *Barnich* did not know all the details of the phone calls or the breadth of other communications. The court based its decision on the appearance of impropriety. Likewise, here, movants do not know all the details of every communication between Commission Huebsch and MISO; however, the circumstances of the communications likewise create the appearance of impropriety. As in the *Paternity of B.J.M.* case, the timing and extent of Commissioner Huebsch’s communications “have the potential to erode public confidence and create the appearance of partiality.” 2019 WI App 10 at ¶ 25.

For the reasons described above, the discernible facts present here create a risk of bias and impropriety that is impermissibly high. *Guthrie v. Wisconsin Employment Relations Comm'n*, 111 Wis. 2d 447, 454 (1983). The totality of the facts and circumstances demonstrate a “compelling

appearance of impropriety” that requires disqualification and recusal of Commissioner Huebsch. *Guthrie v. Wisconsin Employment Relations Comm'n*, 107 Wis. 2d 306, 314 (1982).

### **FACTS RELATING TO THE RECUSAL OF CHAIR VALCQ**

Chair Valcq’s Recusal Statement does not list the Cardinal-Hickory Creek transmission line as a matter which she “participated in personally and substantially.” Valcq Recusal Policy at 1 (Exhibit C). The breadth and depth of Chair Valcq’s relationship with We Energies, however, when objectively and reasonably viewed, creates an appearance of bias in light of WEC Energy Group’s 60% controlling ownership in ATC, and her participation in previous joint WE/ATC applications to the Commission.

While *Guthrie* focused on the adjudicator’s representation of a party in an earlier stage of the proceeding, the same logic applies to a case where the adjudicator’s involvement with a party has been so extensive, comprising so much of his or her career, and so recent that it creates at least an appearance of bias. Chair Valcq’s LinkedIn profile states that she worked for We Energies for virtually her entire career. Chair Valcq began working at We Energies immediately after law school and continued working there for 14 years and 11 months (1999-2014) during which time her practice encompassed “all aspects of administrative and regulatory law, policy and legislative interpretation.” Then after less than a year at a sports management firm and a short period of time off, in 2017, she moved to the Quarles & Brady law firm where she represented We Energies for another year and a half before becoming Chair of the Commission. On information and belief, Quarles & Brady served as We Energies’ principal outside law firm and legal counsel during this time. Chair Valcq left Quarles & Brady on Friday, January 4, 2019, and she started in her role as Chair of the Commission on Monday, January 7, 2019.

Chair Valcq's Recusal Policy statement lists 28 matters that she "was personally and substantially involved" in and from which she recused herself because of her involvement at either We Energies or at Quarles & Brady. The number of cases (28), alone, reflects the breadth and depth of her connection to the utility. This recusal list, of course, does not include numerous prior dockets involving ATC, now closed, in which Chair Valcq might have had some level of involvement in light of her legal responsibilities for We Energies and WEC Energy Group's 60% controlling ownership in ATC.

Chair Valcq's list of matters on which she personally and substantially worked includes four cases involving both We Energies and ATC as parties, and it includes several cases involving applications for approval to build generation facilities and, specifically, renewable generation facilities. Those generation facilities all connect to the grid. The proposed Cardinal-Hickory Creek transmission line, if approved and built, will be integrated into the regional grid. The nature of the grid is such that We Energies, ATC, and the power plants in these cases might be affected directly or indirectly by this proposed transmission line. Issues can often overlap, and ATC's economic interests are obviously important to We Energies given its 60% ownership of ATC.

Moreover, Chair Valcq's in-house attorney role at We Energies and outside counsel role at Quarles & Brady may well have extended to business and legal strategy matters beyond just the contested cases that she identified in her January 2019 Recusal Policy statement. While Quarles & Brady did not represent We Energies directly in this proceeding, the extent of Chair Valcq's relationship with We Energies and the lack of any meaningful gap between her representation of We Energies and this case create at least an appearance of bias to a reasonable person that warrants recusal in this particular contested case. *See PepsiCo Inc.*, 764 F.2d at 461 (requiring recusal even if the circumstances are "accidental" and are not the result of any bad faith or impropriety on the

part of the judge). The standard is whether “a reasonable well-informed observer could question [her] impartiality” considering the totality of the facts and circumstances. *In re U.S.*, 572 F.3d 301, 312 (7th Cir. 2009).

Again, Chair Valcq and the Commission must look at the facts in combination and in total. They must consider the number of cases, the types of cases, the relationship between We Energies and ATC (including joint applications and affiliated interest agreements), the nature of the grid, and the lack of any separation between her departure from the Quarles & Brady law firm and her starting date as the Chair of this Commission. All of these factors demonstrating the depth and breadth of Chair Valcq’s relationship with We Energies lead a reasonable person to question her impartiality in this case. “[O]ur system of law has always endeavored to prevent the probability of unfairness.” *Guthrie v. Wisconsin Employment Relations Comm’n*, 111 Wis. 2d 447, 454 (1983). Chair Valcq’s relationship with We Energies and ATC, as described above, crosses a line in this particular contested case.

### **REMEDY AND RELIEF**

DALC and WWF do not bring this motion lightly. Taken as a whole and viewed objectively and reasonably, recusal and disqualification is required. The Commission sits as the adjudicator in this contested case, and, as such, is required to render an independent and impartial decision that is untainted by any appearance of impropriety. The Commission must afford due process and a fair and unbiased hearing to all parties. MISO has intervened to litigate as a party-advocate in this case. The totality of the circumstances—including MISO’s and the Applicants’ “common interest” arrangement and Commissioner Huebsch’s specific communications with MISO—creates a conflict of interest and appearance of impropriety that permeates the Commission’s

deliberations and decision-making process.<sup>18</sup> The deliberative process is tainted and a Commission final order based on it would be void, notwithstanding whether or not Commissioner Huebsch's vote was necessary to the decision. *Jackson v. Benson*, 249 Wis. 2d 681, 691 (2002); *Case v. Hoffman*, 100 Wis. 314, 74 N.W. 220, 222 (1898). The appearance of bias and potential erosion of public trust and confidence in the Commission's ability to decide this case fairly is exacerbated by Chair Valcq's participation in light of the circumstances described above.

DALC and WWF are aware that the Commission apparently believes that it must reach a decision on the Applicants' CPCN by September 29, 2019 or otherwise the CPCN is somehow automatically approved. Construing Wisconsin statutes to reach that result would deprive DALC, WWF and other public intervenors of: (1) Their constitutionally protected rights to procedural due process including decision-making by the Commission that is fundamentally fair and without either actual or an appearance of bias or partiality; and (2) Their constitutionally protected property rights because approval of the CPCN would allow Applicants to exercise eminent domain and take private property without due process of law. The Wisconsin statutory timeline must give way to ensuring that DALC, WWF and other intervenors are not deprived of their constitutional rights. *Milwaukee Branch of NAACP v. Walker*, 357 Wis. 2d 469, 500 (2014) (stating that courts will construe statutes and administrative rules to avoid possible constitutional conflicts).

There is no emergency necessitating that the Applicants' CPCN be approved by September 29, 2019 because: (1) The Applicants have not received all other necessary approvals and permits to go forward; (2) The federal environmental impact statement process is not yet completed; (3) The Applicants' own stated "planned in-service date" for the proposed Cardinal-Hickory Creek

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<sup>18</sup> Moreover, the Commission, through Commissioner Huebsch's participation in the MISO Advisory Committee (as well as OMS), is a "stakeholder" in MISO, entitled to vote on key matters such as MISO Board membership and to participate as a member in MISO affairs. <https://www.misoenergy.org/stakeholder-engagement/members>

transmission line is not until 2023; (4) Applicants state on their website that they do not anticipate a decision from state regulators until 2019-2020<sup>19</sup>; and (5) The Commission Staff's credible analysis shows that it would be economically beneficial to delay this proposed line until 2025 in any event. Ex. PSC-Vedvik-7p at 6.

These proceedings are fatally flawed. Under these circumstances, the Commission cannot now make a decision as an independent and impartial adjudicator as required under the Due Process Clause of the United States Constitution and under applicable Wisconsin constitutional and statutory provisions. DALC's, WWF's and other public intervenors' constitutionally protected rights should not and must not be violated by the fundamentally flawed process now before the Commission.

Based on the unreasonable risk of bias and appearances of impropriety in this contested case: (1) Commissioner Huebsch should recuse himself from further deliberations on the merits in this case; (2) Chair Valcq should recuse herself from further deliberations on the merits in this case; and (3) The Commissioners should refrain from approving the Applicants' requested CPCN for the proposed Cardinal-Hickory Creek transmission line.

Dated: September 20, 2019

Respectfully submitted,

/s/ Howard A Learner  
Howard A. Learner  
Robert Kelter  
Rachel Granneman  
Environmental Law & Policy Center  
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*Attorneys for the Driftless Area Land  
Conservancy and Wisconsin Wildlife  
Federation*

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<sup>19</sup> <https://www.cardinal-hickorycreek.com/>



**EXHIBITS TO DALC/WWF'S  
MOTION FOR RECUSAL AND DISQUALIFICATION**

**Exhibit A:** MISO Advisory Committee CHARTER, adopted March 15, 2019

**Exhibit B:** MISO 2<sup>nd</sup> Data Response to DALC/WWF—PSC REF # 363983

**Exhibit C:** Recusal Policy for Rebecca Cameron Valcq's Appointment to the Public Service Commission



## **Advisory Committee CHARTER**

### **Mission Statement:**

Consistent with the Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc. ("Transmission Owners Agreement"), the Advisory Committee shall be a forum for its members to be apprised of the MISO's activities and to provide information and advice to the management and Board of Directors of the MISO on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, but neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the MISO.

### **Reports To:**

The Advisory Committee reports to the MISO Board of Directors. Per the Transmission Owners Agreement, the reports of the Advisory Committee and any minority reports shall be presented by the MISO President to the MISO Board of Directors. As a practical matter, the MISO President may request the Chair of the Advisory Committee to deliver such reports to the Board of Directors.

### **Membership**

The composition and selection of the representatives to the Advisory Committee is outlined in the Transmission Owners Agreement.

### **4. Expected Sunset Provisions:**

None. Per the Transmission Owners Agreement, at all times there shall exist an Advisory Committee to the Board.

### **5. Expected Meeting Time, Frequency & Location:**

Per the Transmission Owners Agreement, the Advisory Committee shall meet at least quarterly.

All regular meetings of the Advisory Committee shall be open to the public. While it is the intent that Advisory Committee meetings be conducted in open session it is recognized that on rare occasions the Advisory Committee Chair may call special closed meetings of the Advisory Committee for certain sensitive issues (i.e. Personnel issues) that the Chair deems appropriate. Advisory Committee members shall have the right to request that the topic be discussed in open session and if such request is made and a majority of the voting members of the Advisory Committee approve such a request, the topic shall be discussed at the next scheduled regular meeting of the Advisory Committee or at a special open meeting if necessary. If the Advisory Committee meets in closed session, the topics of such closed session along with the decisions made at the closed session will be announced by the Advisory Committee Chair or designee at the next regular meeting of the Advisory Committee. However, per the Transmission Owners Agreement, meetings of the constituent stakeholder groups represented on the Advisory Committee need not be open to the public.

Timely notice of all regular Advisory Committee meetings shall be provided to the members of the Advisory Committee and copies of all materials to be addressed at such meetings shall be posted on the MISO's website. Timely notice of special closed meetings of the Advisory Committee shall be provided to the members of the Advisory Committee and copies of all materials to be addressed at such special closed sessions shall be emailed to the voting members of the Advisory Committee.



These meetings will be held at MISO's meeting facilities, and conference call capability will also be provided.

**Quorum Requirements:**

At least one Advisory Committee voting member or alternate representing at least six of the ten constituent stakeholder groups must be present for the Advisory Committee to officially conduct business. The number of voting members and constituent stakeholders groups is outlined in the Transmission Owners Agreement.

**Voting Methods:**

The Advisory Committee will conduct weighted sector voting and each voting member has one vote.

**Requested Subject Matter Experts:**

Per the Transmission Owners Agreement, the MISO President and at least two other members of the MISO Board of Directors shall meet with the Advisory Committee at least quarterly. The Advisory Committee draws upon the collective expertise of Stakeholders that elect to participate together with qualified MISO staff.

**Sunset Provisions:**

None. Per the Transmission Owners Agreement, at all times an Advisory Committee to the Board shall exist.

## Jeffrey Small

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**From:** Lauren Azar <Lauren@azarlawllc.com>  
**Sent:** Tuesday, November 14, 2017 1:24 PM  
**To:** Jeffrey Small  
**Subject:** COMMON INTEREST MATERIALS - Draft Minutes  
**Attachments:** Common Interest Materials 11-9-17 minutes MISO and CHC.docx

CONFIDENTIAL Common Interest Materials.

Jeff - Great to meet you last week and thanks for a productive meeting. As promised, the Utilities drafted some minutes capturing what we think were the results of our meeting. I am attaching that document and ask that the MISO determine if the minutes are accurate and if MISO could support them in the PSCW proceeding as discussed last week. Or, make revisions that we can discuss in a future call.

During our meeting, Jeff Webb stated it is possible that MISO has publicly stated something like the following: "if one of the MVPs is not built, it would not change the overall portfolio and MISO would find a way to develop a project to provide the benefits elsewhere." MISO agreed to investigate whether that statement is in the public domain or a result of internal discussions. The answer may have an influence on how the Utilities draft their Wisconsin application.

Jeff Webb also described the proposed MVP modification principles that MISO submitted to the TOs, but which did not advance beyond the TOs. The document never became public. Jeff Webb promised that he would send us that document through you.

If I have missed any action items from the meeting, please let me know and thanks for your help with this.

Lauren Azar

Azar Law LLC

NOTICE: This communication may contain confidential information. If you have received this email in error, please immediately: (1) advise the sender by reply email or call 608-332-9691; and (2) delete the message and any attachments without copying, disclosing or forwarding the contents. Thank you.

- (3) Any proposals that terminate C-HC in the 345 kV network near Beloit would not be electrically similar enough and would not qualify as a modification to the C-HC portion of MVP5. Any such project would be considered a new project. The Project would be evaluated on its own merits in the MTEP process. If the project qualified for cost-sharing under the current MISO tariff, at best, such a project would receive MEP treatment and the costs would likely be mostly assigned to local zones.
- (4) A proposal to move the eastern end point of C-HC from the Cardinal Substation to the Rockdale Substation--which is within the Madison area 345 kV network-- may or may not qualify as a minor modification to C-HC. In applying reasonableness principles, MISO would need to understand the need for moving the endpoint and whether the benefits of that move would outweigh the costs, e.g. a delay the in-service date, increased costs and \_\_\_\_\_. Given that C-HC is the last of the MVPs to enter regulatory proceedings, further delays are not desirable. and may warrant taking the proposed change to MISO's PAC to allow MISO stakeholders to comment on the proposed change.
- (5) A low voltage proposal – a suite of low-voltage improvements that would address the reliability problems in southwestern Wisconsin, was studied by MISO during the MVP process. MISO concluded that such a low-voltage proposal brought some but not all of the benefits afforded by C-HC and MISO selected C-HC as the MVP rather than the low-voltage alternative. At this time, there is no reason for MISO to revisit this conclusion and would not consider a suite of low-voltage lines to be a modification to C-HC. Instead, such a proposal would be a new project proposal and be evaluated on its own merits in the MTEP process. There is currently no regional cost allocation for lower voltage projects outside of the MVP category, so the lower voltage projects would likely be recovered primarily in the ATC pricing zone.

MISO has consistently taken the position that it will not model the costs and benefits of any single MVP but will evaluate the costs and benefits on a portfolio level, which it does every three years under the MVP triennial reviews. Accordingly, MISO will not model the costs and benefits of C-HC or any alternatives to C-HC.

**Jeffrey Small**

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**Subject:** FW: [EXT] Re: Follow-Up: COMMON INTEREST MATERIALS  
**Attachments:** Written Discussion Related to 11-9-17 Discussions (MISO).docx; Direct Testimony, Final2Wis.pdf

**From:** Jeffrey Small  
**Sent:** Wednesday, November 29, 2017 3:56 PM  
**To:** Lauren Azar  
**Subject:** RE: [EXT] Re: Follow-Up: COMMON INTEREST MATERIALS

Lauren

I attach an edited version of the document that you transmitted for MISO review.

I brought Laura Rauch into the discussion on MISO's end since she might be called upon to opine on one or more of the statements contained in the document. Her suggestions are contained in the attached document.

You might be interested in Laura's testimony in the Badger-Coulee case, especially on page 21. Laura discusses both the selection of individual MVP legs and the Cardinal-Hickory Creek project.

Let me know if you would like more discussion around the edits.

Thanks.

Jeff Small  
MISO Legal  
317.249.5248



~~CONCLUSIONS OF THE 11-9-17 MEETING DISCUSSION POINTS~~

Based on our conversation, we have drafted statements that we believe MISO would support if placed within the Utilities' application to the Wisconsin PSC (PSCW). Please let us know if we have captured MISO's position accurately.

Please note that the Utilities have not yet determined which of the following statements will be used in their application, but would like to have a panoply of options in deciding what alternatives to include with their application.

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While ~~minor~~ modifications have been made to a few ~~of the 2011~~ MVPs that were first approved by the MISO Board in 2011, such modifications have only been authorized when the change is a minor modification and ~~“electrically equivalent”~~ to the approved MVP. In determining whether these factors are satisfied, MISO applies “reasonableness principles.”

If a proposed modification does not satisfy these requirements, it could not qualify as part of the MVP Portfolio and would need to be proposed as a ~~“new project”~~, requiring additional stakeholder and MISO Board scrutiny. Whether such new project would be approved by MISO, and which the applicable cost-allocation designation was applicable, would then need to be determined under the current MISO tariff.

Applying these principles to the Cardinal to Hickory Creek project (C-HC):

- (1) The C-HC part of MVP 5 was designed to connect ~~both the La Crosse, WI and the Dubuque area, IA~~ 345 kV networks to the 345 kV network in the Madison area. ~~(The Badger Coulee Project, the other half of MVP5, terminates in the Madison area 345 kV network.)~~
- (2) Any alternative that moved the eastern endpoint of C-HC from the Madison-area 345 kV network would not be considered a minor modification to C-HC; instead it would be considered a new project. The project would be evaluated on its own merits in the MTEP process. ~~If the project qualified for cost sharing under the current MISO tariff, at best, such a project would receive MEP treatment and the costs would likely be mostly assigned to local zones.~~ MISO Tariff Attachment FF,

the MVP category, so the lower voltage projects would likely be recovered primarily in the ATC pricing zone MISO Tariff Attachment FF, Section II.C.1, requires that a “Multi Value Project must be evaluated as part of a Portfolio of projects, as designated in the transmission expansion planning process [i.e. MTEP] . . . .” A new project resulting from a review outside the evaluation of a portfolio of projects in the MTEP process would not be eligible to become an MVP. A Multi Value Project must be 100 kV or above.

MISO has consistently taken the position that it will not model the costs and benefits of any single MVP but will evaluate the costs and benefits on a portfolio level, which it does every three years under the MVP triennial reviews. Accordingly, MISO will not model the costs and benefits of C-HC or any alternatives to C-HC.

MISO has consistently taken the position that it does not model the costs and benefits of any single MVP outside the context of an MVP portfolio. Benefits and costs are evaluated at the portfolio level, initially through the project justification and every three years thereafter in MVP triennial reviews. Accordingly, MISO would not model the benefits and costs of C-HC or any alternatives to C-HC.



**RECUSAL POLICY FOR  
REBECCA CAMERON VALCQ'S APPOINTMENT TO THE PUBLIC SERVICE  
COMMISSION**

This document serves as the recusal policy for Rebecca Cameron Valcq. Effective January 7, 2019, Ms. Valcq began serving as a Commissioner for the Public Service Commission of Wisconsin (Commission). As a Commissioner, Ms. Valcq is a state public official within the meaning of Wis. Stat. § 19.42(13) and must also comply with the ethical obligations set forth in Wis. Stat. ch. 19, subch. III, and Wis. Stat. §§ 15.06(3)(a) and 15.79(2). Ms. Valcq is also an attorney licensed to practice in the State of Wisconsin and is obligated to comply with the Rules of Professional Conduct for Lawyers, SCR 20:1.11. Pursuant to SCR 20:1.11(d), Ms. Valcq may not participate in a matter in which she “participated personally and substantially while in private practice or nongovernmental employment . . . .”

Prior to her appointment and from September, 2017 until January 4, 2019, Ms. Valcq was employed by the law firm Quarles & Brady. While at the law firm, Ms. Valcq represented WEC Energy Group, Wisconsin Public Service Corporation, and WEPCO (collectively WEC Entities) on discrete matters before the Commission and remain open dockets and are identified below. The vast majority of her representation of the WEC Entities involved matters not jurisdictional to the Commission.

Prior to her employment at Quarles & Brady and from 2000 through 2014, Ms. Valcq was employed as in-house legal counsel for Wisconsin Electric Power Company (WEPCO). She worked on several matters on behalf of WEPCO before the Commission which remain open dockets before the Commission and are identified below.

To avoid either the actual or appearance of a conflict of interest and to comply with Wis. Stat. §§ 19.45, 19.46, 15.06(3)(a), and SCR 20:1.11, Ms. Valcq and the Commission have agreed to the following recusal policy.

1. Ms. Valcq will not participate in the following matters at the Commission where, while at either Quarles & Brady or WEPCO, she personally and substantially participated in that matter:
  - a. 6630-ER-103, *Wisconsin Electric Power Company 2019 Fuel Cost Plan*;
  - b. 6690-ER-103, *Wisconsin Public Service Corporation 2019 Fuel Cost Plan*;
  - c. 6630-FR-2017, *Application of Wisconsin Electric Power Company for Reconciliation of Actual Fuel Costs to the Authorized 2017 Fuel Cost Plan*;

- d. 6630-FR-104, *Application of Wisconsin Electric Power Company for Authorization to Implement New Electric Rates According to its 2014 Fuel Cost Plan;*
- e. 6630-FR-103, *Application of Wisconsin Electric Power Company for Authorization to Implement New Electric Rates According to its 2012 Fuel Cost Plan;*
- f. 6630-FR-102, *Fuels Rules Proceeding to Adjust Wisconsin Electric Power Company's Electric Rates Originally Set in Docket 5-UR-104;*
- g. 6630-FR-102, *Fuels Rules Proceeding to Adjust Wisconsin Electric Power Company's Electric Rates Originally Set in Docket 5-UR-103;*
- h. 5-UR-103, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies for Wisconsin Electric Power Company to Increase Its Electric, Natural Gas and Steam Rates and For Wisconsin Gas LLC to Increase its Natural Gas Rates;*
- i. 5-UR-104, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies for Wisconsin Electric Power Company to Increase Its Electric, Natural Gas and Steam Rates and For Wisconsin Gas LLC to Increase its Natural Gas Rates;*
- j. 5-UR-105, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Authority to Adjust Electric, Natural Gas and Steam Rates;*
- k. 5-UR-106, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Authority to Adjust Electric, Natural Gas and Steam Rates;*
- l. 5-UR-107, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a We Energies, for Authority to Adjust Electric, Natural Gas and Steam Rates;*
- m. 5-AE-146, *Application of Wisconsin Electric Power Company and American Transmission Company for Approval of an Operation and Maintenance Agreement for Transmission Facilities;*
- n. 5-AE-153, *Application of American Transmission Company LLC, Wisconsin Power and Light Company, Wisconsin Electric Power Company, Madison Gas and Electric Company, Wisconsin Public Service Corporation, and*

*Upper Peninsula Power Company for Approval of a Project Services Agreement and Common Facilities Agreement and Termination of a Transitional Services Agreement;*

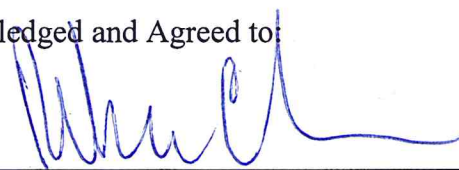
- o. *5-AE-184, Application of American Transmission Company LLC and Wisconsin Electric Power Company, d/b/a We Energies, for Approval of an Affiliated Interest Agreement Relating to Freeman and North Lake Substation Balancing Authority Metering Facilities Installation;*
- p. *5-AE-202, Application of American Transmission Company LLC and Wisconsin Electric Power Company for Approval of an Affiliated Interest Agreement Regarding the Pleasant Prairie Switchyard Reconfiguration Project Common Facilities Expansion Agreement;*
- q. *5-EI-141, Investigation on the Commission's Own Motion to Review the 18 Percent Planning Reserve Margin Requirement;*
- r. *5-GF-144, Request by Wisconsin Electric Power Company and Wisconsin Gas Company for Authorization to Implement a Low Income Pilot Program and to Utilize Escrow Accounting for Residential Customer Class Amounts Over Those Currently Allowed in Rates (Modification to the Low Income Pilot Program);*
- s. *5-GM-101, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas, LLC, both d/b/a We Energies, to Merge Wisconsin Gas, LLC into Wisconsin Electric Power Company;*
- t. *6630-AE-118, Application of Wisconsin Electric Power Company for Blue Sky Request for Approval of Assignment and Assumption of Contracts;*
- u. *6630-BS-100, Application of Wisconsin Electric Power Company to Transfer an Undivided Ownership Interest in its Presque Isle Power Plant, located in the City of Marquette, Marquette County, Michigan, to Wolverine Power Supply Cooperative, Inc.*
- v. *6630-CE-294, Application of Wisconsin Electric Power Company for a Certificate of Public Convenience and Necessity to Construct a Wind Electric Generation Facility and Associated Electric Facilities, to be located in Fond du Lac County;*
- w. *6630-CE-302, Application of Wisconsin Electric Power Company for a Certificate of Public Convenience and Necessity to Construct a Wind Electric*

*Generation Facility and Associated Electric Facilities, to be located in Towns of Randolph and Scott, Columbia County, Wisconsin;*

- x. 6630-CE-309, *Wisconsin Electric Power Company Notification of Intent to Install Emission Control Equipment at its Presque Isle Power Plant Units 5 through 9, Including Low NOx Burners (Units 5 and 6), Spray Dryer Absorbers (Units 5, 6 and 7), Dry Sorbent Injection (Units 8 and 9), Boosted Over Fire Air (Units 5-9), Power Activated Carbon Facilities and Associated Equipment for Control of Sulfur Dioxide, Nitrogen Oxide, Mercury and Air Toxic Emissions Located in the City of Marquette, Marquette County, Michigan;*
  - y. 6630-CU-101, *Application of Wisconsin Electric Power Company for Authority to Convert the Valley Power Plant from a Coal-Fired Cogeneration Facility to a Natural Gas Fired Cogeneration Facility;*
  - z. 6630-DR-105, *Application of Wisconsin Electric Power Company for a Declaratory Ruling Regarding Its Plan to Increase the Supply of Renewable Energy in Wisconsin;*
  - aa. 6630-EI-113, *In the Matter of the Application for All Approvals Necessary for the Transfer of Ownership and Operational Control of the Point Beach Nuclear Plant from Wisconsin Electric Power Company (d/b/a We Energies) to FPL Energy Point Beach, LLC, a subsidiary of FPL Group Capital, Inc.;* and
  - bb. 6630-RM-100, *Application of Wisconsin Electric Power Company and Randolph Wind, LLC, for All Requisite Approvals in Connection with the Merger of Randolph Wind, LLC, into Wisconsin Electric Power Company.*
2. For a period of twelve months following Ms. Valcq's appointment, Ms. Valcq will recuse herself from any new matter filed with the Commission in which Ms. Valcq was personally and substantially involved. Those matters, if any, will be identified by way of addendum to this recusal policy.

Acknowledged and Agreed to:

BY:

  
Rebecca Cameron Valcq, Commissioner  
Public Service Commission of Wisconsin

DL: 01670281

**ADDENDUM A**  
**TO**  
**RECUSAL POLICY FOR**  
**REBECCA CAMERON VALCQ'S APPOINTMENT TO THE PUBLIC SERVICE**  
**COMMISSION**

In accordance with Item 2 of the Recusal Policy for Ms. Valcq, the following docket(s) have been added and shall be handled in accordance with the policy.

Added January 16, 2019

- 6630-FR-2018, *Application of Wisconsin Electric Power Company for Reconciliation of Actual Costs to the Authorized 2018 Fuel Cost Plan.*
- 6690-FR-2018, *Application of Wisconsin Public Service Corporation for Reconciliation of Actual Costs to the Authorized 2018 Fuel Cost Plan*

DL: 01672563